

Warranty for physical defects of horses under Polish law

In this issue of Horse International's Legal and Business Journal we would like to focus on the sale and purchase of horses in Poland. Despite the fact that the sale and purchase agreement has been harmonized within the European Union, especially when it comes to the consumer protection, there are yet many differences among the member states. The Polish law is a good example of such differences when compared to other EU jurisdictions. Therefore, it is advisable to take note of these differences. This article has been edited by Lex Hippica from Warsaw, Poland and one of the members of the Alliance of the European US-Asian Equine Lawyers.

Introduction

Under Polish legal system a horse is not treated as a good, nevertheless sale of horses and associated issues are governed by the provisions of the Polish Civil Code of 23 April 1964 with subsequent changes ("Polish Civil Code") pertaining to the sale of goods and warranty for their defects. Cases relating to defects of sold horses constitute a majority of cases connected with the horse industry which go to court. Although awareness concerning legal aspects of a sale of horses among horse breeders and owners is spreading, still it is common to see a sale contract which is far from being adjusted to the needs and expectations of the parties and to the new regulations which came into force in 2014.

A horse is not a car - regulations before 2014

Since the 25th December 2014 when the Polish legislator has implemented the Directive 2011/83/EU of the European Parliament and of the Council of 25th October 2011 on consumer rights, like in other EU member states, although formally a horse is not a good, the same provisions which apply to the sale of cars and other goods are also applicable to the sale of

animals. Until the change of law, there were specific regulations applicable to animals when it comes to a warranty for defects. It was the Regulation of the Minister of Agriculture dated on the 7th October 1966 regarding the responsibility of sellers for main defects of certain animal species ("Regulation") which provided the seller's liability only for main defects of horses indicated in the above mentioned Regulation such as: cribbing, chronic brain disease, chronic condition of internal parts of eyes, chronic disease related to difficulty of breathing. It must be noticed though that this Regulation did not refer to business to consumer relations. According to the Regulation the seller was responsible for other defects only if it was stipulated in a sale contract by its parties, otherwise fault-based liability was applied. What was also important, this law provided the very short warranty deadlines for seller's liability for defects of a horse i.e. defects of a horse would have to be revealed before 15 or 30 days (depending on

the kind of a defect) counted from the day of taking-over of a horse by the buyer. In such case a warranty deadline was only 3 months from the expiry of 15 and 30 - days term. Due to this strict legislation, before the change of law, Polish courts produced rather uniform and consistent case law referring to the sale of horses. One cannot deny that from the legal point of view treating horses in the same way as a car or a TV set does not guarantee effective and equal protection of interests of both parties of a horse sale transaction. Therefore, in our view the EU Legislator should distinguish transaction of a sale of animals from sale of other goods and to work out specific regulations governing warranty for defects of animals.

A definition of a horse defect

According to Article 556(1) of the Polish Civil Code, a physical defect involves inconsistency of the sold good with the contract. In particular, the good is inconsistent with the





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contract if: **1** it fails to have a property, which a good of that kind should have taking into account the purpose stipulated in the contract or arising from the circumstances or its intended use; **2** it fails to have a property, about which the seller has assured the buyer, specifically by presenting to the buyer a sample or a model; **3** it fails to satisfy the purpose, which the buyer indicated to the seller at the conclusion of the contract, and the seller failed to make a reservation to such an intended use; **4** it was released to the buyer incomplete. Therefore, it is particularly important to stipulate in the contract the purpose which a horse is intended to serve. After a defect will be revealed, a court will assess whether it prevents a use of a horse in accordance with the stipulated purpose. Furthermore, if the buyer informs the seller that it wishes to buy a horse for a specific purpose and the seller knowing that the horse cannot meet the buyer's expectations does not make a reservation, then lack of a particular property will be treated as a physical defect. It is important to note that also behavioural problems may be treated as defects. Of course, a defect which the buyer may invoke must have been existing (although hidden) before the conclusion of the sale contract. As a principle, the buyer must prove that a defect existed before the conclusion of the contract. However, in case of consumer contracts there are different regulations regarding the burden of proof which are specified in a further part of this article. The seller will be released from liability on account of warranty for defects, if the buyer knew of the defect at the moment of the contract's conclusion.

Available claims

In principle, if the good sold has defects, the buyer may demand a replacement of such a good for the one free from defects or removal of the defect. Furthermore, the buyer may make a declaration on reduction in price or renounce the contract. However, in case of renouncement or price reduction, the seller may declare that it will immediately and without excessive inconvenience for the buyer replace the defective good with a good free from defects or that he will remove the defect. This limitation does not apply if the good has already been replaced or repaired by the seller. The reduced price shall remain in such proportion to the price resulting from the contract as the value of the defective good remains to the value of the

good without a defect. The buyer may not renounce the contract if the defect is insignificant. In the assessment whether the defect is significant or not the purpose which the horse is intended to serve is taken into account. If due to a physical defect the buyer has renounced the contract or has declared a reduction in price, he may demand the redress of the damage he incurred by concluding the contract unaware of the existence of the defect, even if the defect results from circumstances the seller is not liable for. In particular, the buyer may demand the reimbursement of the costs of concluding the contract (including legal costs), the costs of horse transport, insurance, vet, stable etc.

No mercy in business to consumer sales

Business to consumer sales are treated in a particular way due to the necessity of consumers' protection. In case of doubts who is to be considered as a professional party in a horse sale transaction, one should always take into consideration whether a conducted activity is of an economic nature, and if it is organized and performed on a continuous basis. A party of a sale transaction does not have to be registered officially to be considered by a court as a professional conducting commercial activity. When it comes to business to consumer sales in Poland, two legal presumptions need to be taken into account, i.e. the presumption of existence of a defect and presumption of a defect acknowledgment. As stated before, according to the first presumption - if a physical defect has been detected within 1 (one) year from the date of a horse's sale, it shall be presumed that the defect or its cause existed at the time of transition of a risk to the buyer. When we take into consideration delicacy of horses, the period of one year seems to be far too long. The other presumption is even more crucial and it states that if a buyer (consumer) has requested replacement of a horse or removal of a defect or made a declaration of price reduction, specifying the amount by which the price is to be reduced, and the seller has not responded to this request within 14 (fourteen) days, it is considered that the buyer's request was acknowledged by the seller.

Attention to deadlines for warranty

Last but not least, one should not forget the binding limitation periods. Under Polish law,

the seller remains liable due to warranty for horse's defects for 2 (two) years counted from the date of handing - over of a horse. All the above specified claims under warranty for defects, must be raised by the buyer within 1 (one) year from the day on which the defect was discovered; however, in case of consumers - the warranty period cannot end before the expiry of the 2-years term. None of the above mentioned terms is binding if the seller fraudulently failed to disclose a defect to the buyer.

Conclusions

Since increasingly more horse sales involve Polish partners, either as sellers or as buyers, it is important to take care of a proper security of such transactions. Although the warranty for defects of goods legislation has been harmonized by the EU, Polish law has its own particularities. This paper aimed to present the most important provisions of Polish law that may apply in case of a sale of a horse with defects. If you have any questions concerning transactions of sale of horses or other horse industry related legal issues, please contact us at +48 695 620 690; +48 609 444 970; office@lexhippica.pl. Please see also our website lexhippica.pl



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If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us via info@europeanequinelawyers.com or by telephone +31-(0)135114420.

